

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**PHOEBE RENEE HALLIWELL,  
a/k/a RONNY DARNELL**

**Plaintiff,**

**v.**

**JOE ALLBAUGH, et al.,**

**Defendants.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Case No. CIV-18-1152-D**

**ORDER**

Before the Court is Plaintiff's "Motion to Leave to Amend Complaint a Third Time." (ECF No. 34). Plaintiff's Second Amended Complaint (ECF No. 20) was filed on February 21, 2019 and is currently the controlling pleading in this matter, as explained in the Court's Order dated June 3, 2019. (ECF No. 32). As also explained in ECF No. 32, Plaintiff can no longer amend her complaint as a matter of course. *See* Fed. R. Civ. P. 15(a)(B). Instead, Plaintiff must seek the Court's leave. *See id.* 15(a)(2). It appears that with the current motion, Plaintiff is attempting to seek the Court's leave to file a Third Amended Complaint. *See* ECF No. 34. However, as explained to Ms. Halliwell, under this Court's Local Rules, when moving for leave to amend, Plaintiff "must attach the proposed pleading as an exhibit to the motion." LCvR 15.1. Plaintiff has not attached a proposed Third Amended Complaint with her current motion.

If Ms. Halliwell intends to seek leave to amend her complaint, she shall file a motion under Fed. R. Civ. P. 15(a) and shall attach to the motion her proposed Third

Amended Complaint, using the Court's approved form. Plaintiff shall indicate in her motion the nature of her proposed amendments. Plaintiff is cautioned that any amended complaint will supersede the controlling complaint which is ECF No. 20. That is, **Plaintiff must rename every defendant and list every allegation she wishes to include in the Third Amended Complaint.** In her current motion, Plaintiff discusses "dropp[ing] all other charges against the 7 defendants, and proceed[ing] with the deliberate indifference violation." (ECF No. 34). This statement coincides with Plaintiff's statements in ECF No. 24, which are further reflected in the Court's Order in ECF No. 27, which adopts the Report and Recommendation at ECF No. 22 and describes the remaining claims as:

- an Eighth Amendment claim against Defendants Allbaugh, McCurdy, Honaker, and Jones for ordering Dr. Hennenigan to remove the diagnosis of Plaintiff's Gender Dysphoria (GD) from her medical record and thereafter refusing to treat the condition;
- an Eighth Amendment claim against Defendants Byrd, Rashti, and Paine for refusing treatment for Plaintiff's GD; and
- an Eighth Amendment claim against Defendant Rashti for denying Plaintiff access to Dr. Hennenigan.

*See* ECF Nos. 22 & 27. If Plaintiff wishes to proceed on these claims only, no further action is necessary with regard to filing a Third Amended Complaint. However, if Plaintiff wished to proceed on these Eighth Amendment claims, she must still serve the Second Amended Complaint (ECF No. 20) on Defendants Allbaugh, McCurdy, Honaker, Jones, Byrd, Rashti, and Paine. To do so, Plaintiff must serve a copy of the Order for Service and Special Report (ECF No. 28), the Second Amended Complaint (ECF No. 20), and a

summons on each defendant in accordance with Federal Rule of Civil Procedure 4; provided, however, that said service shall not be effected until the necessary service papers (along with service copies for each defendant) have been completed by the Plaintiff and furnished to the Clerk for processing and issuance. The Court had previously extended Plaintiff's service date to June 20, 2019, but **if Plaintiff chooses to proceed with the Second Amended Complaint, the Court will extend Plaintiff's service deadline to July 5, 2019.**

However, if Ms. Halliwell wants to file a Third Amended Complaint and not proceed with the claims as outlined above, Plaintiff must:

- file a motion under Fed. R. Civ. P. 15(a) seeking the Court's leave to file a Third Amended Complaint;
- attach her proposed Third Amended Complaint to her motion, using the Court's approved form; and
- indicate in her motion the nature of her proposed amendments.

As explained to Ms. Halliwell before, if she chooses to file a Third Amended Complaint, that document will supersede the Second Amended Complaint, and that document will no longer control. Thus, **Plaintiff must rename every defendant and list every allegation she wishes to include in the Third Amended Complaint.** If Plaintiff chooses to file a Third Amended Complaint, she must do so, in accordance with the directions outlined above by **July 5, 2019.**

The Court Clerk's Office is directed to send Ms. Halliwell a copy of the Court's approved form for filing a Complaint under 42 U.S.C. § 1983, which she must use if she chooses to file a Third Amended Complaint.

**IT IS SO ORDERED** on June 18, 2019.



---

SHON T. ERWIN  
UNITED STATES MAGISTRATE JUDGE